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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER BANAWA,

Defendant and Appellant.

D061278

(Super. Ct. No. SCD238492)

APPEAL from a judgment of the Superior Court of San Diego County, Laura W. Halgren, Judge. Affirmed.

Christopher Banawa pleaded guilty to one count of burglary (Pen. Code, § 459) based on his unlawfully entering a Wal-Mart store with intent to steal. The court granted him three years of probation, one condition being that he "stay away from all Wal-Mart stores in [San Diego] County." At the sentencing hearing, Banawa objected to that condition as being overbroad, and requested it be narrowly tailored to apply only to the specific Wal-Mart store involved in this case. The court denied that request, ruling, "I

think it is reasonable and appropriate [Banawa] stay away from all Wal-Marts because that is—Wal-Mart is the victim in the case."¹

Banawa's sole contention is that "the trial court abused its discretion when it ordered [him] to stay away from all Wal-Marts in San Diego County as a condition of probation because the condition's broad nature is not reasonably related to [his] crime or future criminality and is unconstitutionally overbroad."

The People counter that Banawa forfeited this contention because at the sentencing hearing he failed to object to the probation condition on grounds that it violated the test set forth in *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*). The People further contend that, in any event, the probation condition is valid because it is reasonably related to Banawa's future criminality. We affirm the judgment.

DISCUSSION

We reject the People's claim Banawa forfeited his contention because he assertedly failed to object to the probation condition on grounds set forth in *Lent*, which provides: "A condition of probation will not be held invalid unless it '(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality'" (*Lent, supra*, 15 Cal.3d at p. 486.). In our view, Banawa's trial court objection, although brief and cursory, sufficed to alert the court it was based on the *Lent* test, especially the third prong regarding whether the probation

¹ We rely on the facts as stated in the plea agreement because the appellate record contains no preliminary hearing transcript or probation report.

condition was reasonably related to future criminality. We construe the court's finding that the probation condition was "reasonable" as a shorthand analysis conducted in light of *Lent*'s third prong. Lastly, there are sound reasons for not finding forfeiture in this case: "A timely objection [to a probation condition] allows the court to modify or delete an allegedly unreasonable condition or to explain why it is necessary in the particular case. The parties must, of course, be given a reasonable opportunity to present any relevant argument and evidence. A rule foreclosing appellate review of claims not timely raised in this manner helps discourage the imposition of invalid probation conditions and reduce the number of costly appeals brought on that basis." (*People v. Welch* (1993) 5 Cal.4th 228, 235.)

On the merits of Banawa's claim, we conclude the trial court did not abuse its discretion in ordering him to stay away from all Wal-Mart stores in San Diego County. "We review conditions of probation for abuse of discretion." (*People v. Olguin* (2008) 45 Cal.4th 375, 379 (*Olguin*).) "In granting probation, courts have broad discretion to impose conditions to foster rehabilitation and to protect public safety pursuant to Penal Code section 1203.1." (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.) "[T]he sentencing court violates this standard when its determination is arbitrary, capricious, or 'exceeds the bounds of reason, all of the circumstances being considered.' " (*Carbajal*, at p. 1121.)

Here, under *Lent*, the probation condition is valid. It is directly related to Banawa's crime of entering a Wal-Mart store with intent to steal. Although the probation condition relates to ostensibly noncriminal conduct of entering any Wal-Mart store in San

Diego County, it clearly prohibits conduct reasonably related to future criminality by preventing Banawa from burglarizing other Wal-Mart stores in the county. Wal-Mart is a single organization with multiple locations; thus, when Banawa burglarized one location, he burglarized the organization. Further, it is reasonable to infer that this probation condition will deter Banawa from burglarizing one Wal-Mart store and attempt to return the stolen goods to other Wal-Mart stores in the county. We cannot say the trial court acted arbitrarily or unreasonably in imposing this probation condition.

Banawa contends the challenged probation condition infringed his constitutional right to travel, arguing: "Wal-Mart is well known as an affordable, multi-purpose warehouse and department store. People often shop there because it meets their budgetary needs. Restricting appellant from shopping at all Wal-Marts in San Diego County could greatly limit his ability to purchase essential goods. Additionally, it is not reasonable to banish appellant from an entire chain of stores for committing an offense at one location."

The California Supreme Court has stated that a probation condition that imposes limitations on a person's constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as constitutionally overbroad.

(*Olguin, supra*, 45 Cal.4th at p. 384.) Banawa's reliance on *In re White* (1979) 97 Cal.App.3d 141 is unavailing. In *White*, the defendant had pleaded guilty to soliciting an act of prostitution. The trial court imposed a probation condition completely prohibiting her from being in certain designated areas of Fresno at any time. The Court of Appeal

ruled this unreasonably sweeping condition was unrelated to rehabilitation and violated the defendant's right to intrastate travel. (*White*, at pp. 143-144, 147-149.)

Here, far from prohibiting Banawa from being in certain areas of San Diego County or even in the vicinity of all Wal-Mart stores in the county, the court only barred him from entering those Wal-Mart stores located in the county. Further, contrary to Banawa's implied assertion, there is no constitutional right to shop at Wal-Mart stores; thus we need not subject the probation condition to constitutional scrutiny. In the absence of a demonstrated impairment of a constitutional right, a probation condition is only subject to the deferential abuse of discretion standard. (*Olguin, supra*, 45 Cal.4th at p. 387.) The question is whether the probation condition was reasonable. (*Lent, supra*, 15 Cal.3d at p. 486.) We conclude it was, because Banawa may still travel freely throughout the county, and shop at any grocery or retail store other than Wal-Mart.

DISPOSITION

The judgment is affirmed.

O'ROURKE, J.

WE CONCUR:

NARES, Acting P. J.

AARON, J.